

Haynsworth
Sinkler Boyd, P.A.

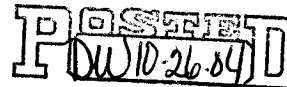
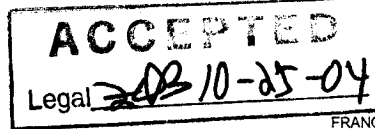
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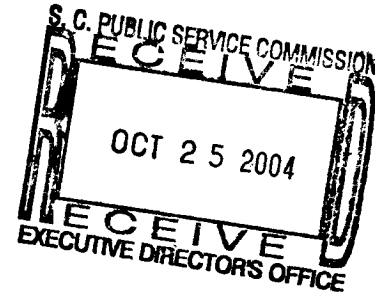
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October 25, 2004

VIA HAND DELIVERY

The Honorable Randy Mitchell, Chairman
South Carolina Public Service Commission
100 Executive Center, Suite 100
Synergy Complex, Saluda Building
Columbia, South Carolina 29211



Re: Docket No. 2004-178-E
Application of South Carolina Electric & Gas Company
for an Increase in Electric Rates and Charges
Our File No. 4381.203

Dear Chairman Mitchell:

I am serving as one of the counsel of record for South Carolina Electric & Gas Company, in the above-referenced matter. However, I am also writing this letter as an "Officer of the Court", sharing responsibility with the Commission and the lawyers appearing before it for the appropriate administration of judicial proceedings. I, therefore, trust that you will accept this letter in the spirit in which it is offered.

At its agenda session on October 12, 2004, Vice Chairman Hamilton announced that the Commission, with the approval of the Legislative Oversight Committee, had retained the services of a Mr. Scott Hempling to assist the Commission in SCE&G's Electric Rate Case and in other matters, until the Commission is able to replace Ms. Florence Belser, who has left the Commission's Legal Staff. It was my understanding at that time that Mr. Hempling would assist the Commission in the procedural conduct of the Hearing, as Ms. Belser has done in the past.

It appears that Mr. Hempling is not admitted to practice law in South Carolina, which, at least in my opinion, would preclude him from providing legal advice and counsel on the conduct of SCE&G's rate proceedings, *i.e.*, assisting the Chairman in ruling on issues of admissible evidence, objections of counsel, and other procedural matters that occur in the course of a Commission hearing. I, thereafter, learned that the Commission plans to retain additional counsel to associate with Mr. Hempling in order to allow him to appear *pro hoc vice* in the SCE&G Rate Case.

Allowance of an attorney to appear *pro hoc vice* occurs almost always when a non-resident attorney, not admitted to practice in this jurisdiction, wishes to appear in a proceeding in South

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Carolina. If otherwise qualified, such an attorney is allowed to appear with local counsel who is responsible to the court or tribunal before which the attorneys are appearing. The theory is that the local attorney can insure that the non-licensed counsel is appropriately informed and supervised as to matters of local law, procedures, and customs of the practice. However, that is not what is contemplated in the present case. Rather, it appears that we will have the very awkward procedural arrangement with Mr. Hempling rendering advice to the Commission somehow subject to the oversight of associated local counsel. Yesterday, I was informed by Ms. Jocelyn Boyd that she will act as the local counsel sponsoring Mr. Hempling. Ms. Boyd is a member of the Public Service Commission Legal Staff and is an experienced regulatory attorney. I would respectfully suggest that Ms. Boyd is more than capable of assisting the Commission in the conduct of this case.

I am now informed however, that Mr. Hempling nevertheless will be retained by the Commission to consult with the Commission on the SCE&G Rate Case and will perhaps be utilized in drafting the Commission's Order. If this is correct, I must convey the following concerns to the Commission.

As you well know, South Carolina, unlike most jurisdictions, by statute, imposes the Canons of Judicial Ethics on the Public Service Commission. These Canons specifically address the conduct contemplated in the Commission's reliance on Mr. Hempling for advice and counsel, *i.e.*, a judicial expert, and as a staff attorney in drafting a proposed Commission Order.

First, as to one with whom the Commission will consult in SCE&G's Rate Case, Canon 3.b.7(b) provides that a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person to be consulted and the substance of the advice or opinion to be given and affords the parties reasonable opportunity to respond. The expert essentially is a court witness in the proceeding. To do otherwise would subject an adjudicating tribunal to potential influence by persons and information outside of the record in the case as to which none of the parties to the proceeding could respond. For relevant court rules, *see* S.C.R.Civ.P. 614, 702; Fed.R.Evid. 706.

As to the Commission's use of Mr. Hempling in the role of a staff attorney to draft a Commission Order, Canon 5 of the S. C. Appellate Court Code of Conduct for Staff Attorneys and Law Clerks provides that a staff attorney or law clerk should refrain from financial and business dealings that tend to detract from the dignity of his office, interfere with the proper performance of his official duties, exploit his official position, or involve him in frequent transactions with like persons likely to come before the courts he serves. The Canon goes on specifically to provide that a staff attorney or law clerk shall not practice law in any federal, state or local court except in his official capacity as a staff attorney or law clerk or undertake to perform legal services for any private client in return for remuneration.

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It therefore appears that in order for Mr. Hempling to serve as a staff attorney, he must necessarily sever all outside ties. That is, he would need to withdraw from his law firm and discontinue representing his many clients.

Because of the concerns expressed above, I respectfully request an opportunity to review these matters in a status conference in advance of the Rate Proceeding scheduled to begin on Monday, November 1, 2004.

Respectfully Submitted,



Francis P. Mood

FPM/am

cc: The Honorable George Dorn
Ms. Jocelyn D. Boyd
All Parties of Record

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-178-E

IN RE:

Application of South Carolina Electric
& Gas Company for Adjustments in
the Company's Electric Rate Schedules
and Tariffs

CERTIFICATE OF SERVICE

I, Amelia McKie, the undersigned employee of Haynsworth Sinkler Boyd, P.A., hereby certify that I have this 25th day of October, 2004, caused a copies of Francis P. Mood's October 25' 2004, letter to the Honorable Randy Mitchell, on behalf of South Carolina Electric & Gas Company, in the above-referenced docket, to be served on all parties of record whose names appear below via U. S. Mail (unless otherwise indicated):

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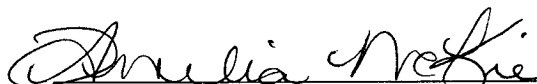
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Amelia McKie

Columbia, South Carolina

October 25, 2004.